United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 94th CONGRESS, FIRST SESSION

Vol. 121 WASHINGTON, SATURDAY, FEBRUARY 22, 1975 No. 27

Senate

IMPROVEMENTS IN ADMINISTRATIVE PROCEDURES OF FEDERAL DEPARTMENTS AND AGENCIES

Mr. KENNEDY. Mr. President, too often outmoded and inflexible procedures have become obstacles to effective, efficient agency action. The current attention being given the subject of regulatory reform reflects the public dissatisfaction with not only what many agencies are doing, but how they are doing it. It is thus timely for Congress to turn its attention to legislation to improve the administrative procedures of Federal departments and agencies on a governmentwide basis, and I am thus introducing, for myself and the Senator from Maryland (Mr. MATHIAS), five bills to amend the Administrative Procedure Act.

The Administrative Procedure Act, which establishes the general principles and requirements which govern procedures in nearly all Federal agencies, was enacted in 1946. Since that time it has stood substantially unchanged, except for the enactment and subsequent amendment of the Freedom of Information Act. During the 1960's, the Senate Subcommittee on Administrative Practice and Procedure gave lengthy and detailed consideration to proposals for a general revision of the act, but no legislation was enacted. This was due in large part to the differences which emerged between the agencies and the organized bar over the content of specific amendments.

In August 1970 the house of delegates of the American Bar Association adopted 12 resolutions calling in general terms for amendments to the Administrative Procedure Act. These resolutions were referred to the administrative law section of the ABA for the drafting of implementing legislation.

Meanwhile the Administrative Conference of the United States, an advisory body established by statute to study problems of administrative procedure in Federal agencies, initiated its own study of the ABA proposals, while, at the same time, working closely with the administrative law section. At its plenary session in June 1973, the conference adopted a comprethensive statemet addressed to the American Bar Association proposals. This statement was subsequently amplified in some particulars. Stated briefly, the conference is in entire or substantial agreement with five of the ABA proposals, is noncommittal on one, and disagrees to a greater or lesser extent with five others. Regarding one of the twelve ABA resolutions relating to pretrial conferences, the conference and the administrative law section agree that legislation is not called for.

Over the past few months, Administrative Conference Chairman Robert Anthony and his staff and ABA representative William Ross and his associates have been meeting together with the staff of the Administrative Practices and Procedures Subcommittee in an attempt to narrow areas of difference and to perfect legislative language to implement the various proposals to amend the Administrative Procedure Act. This has been largely accomplished, and the representatives of the conference and the ABA agree that now is the appropriate time to begin legislative action on these proposals. To begin this legislative process and to facilitate consideration of those proposals by Congress, the agencies, and all other interested parties, I am introducing today a package of bills to amend the Administrative Procedure Act.

S. 796 is supported by both the ABA and the Administrative Conference. It would implement those four of the ABA proposals on which there is entire agreement between the Bar Association and the conference.

Section 1 of the bill would implement the ABA's resolution which called for "providing improved definitions for rule and order which clearly distinguish the nature of rulemaking from the nature of adjudication." This is a matter of considerable theoretical importance for, as the 1947 Attorney General's manual on the Administrative Procedure Act points out—

> The entire Act is based upon a dichotomy between rulemaking and adjudication.

The APA's present definition of "rule" 5 U.S.C. 551(4), covers agency statements "of general or particular applicability and future effect" and specifically classifies the approval or setting of future rates as rulemaking. The purpose of the proposed redefinition is to make the distinction between rulemaking and adjudication turn on whether the agency's action is of general or of particular applicability, rather than whether it is of future or of retrospective effect. The general versus particular distinction seems more in accord with ordinary understanding and usage.

The Administrative Conference, as I have stated, has endorsed the proposed redefinition. However, it has done so on the understanding that those formal proceedings, particularly ratemaking—which have heretofore been subject to more flexible procedural requirements than ordinary formal adjudication in sections 554, 556, and 557 of the APA—should continue to receive special treatment because of the strong policy component in these determinations. Consequently, a new definition, "ratemaking and cognate proceedings" is contained in the bill. It is intended to cover those proceedings affected by the change in the definition of "rule" and is used elsewhere in the bill to permit the agencies to retain their present procedural flexibility with respect to such proceedings.

Section 2 of the bill is intended to narrow the present exemptions from the requirement in 5 U.S.C. 553, for notice and opportunity for public comment on proposed agency rules. The section would delete entirely the so-called proprietary exemption for matters relating to "public property, loans, grants, benefits, or contracts," and it would cut back the present exemption for rulemaking involving a military or foreign affairs function, so that the exemption would apply only to matters required to be kept secret in the interest of national defense or foreign policy. Agencies would, of course, continue to be able to dispense with notice and opportunity for comment on the basis of a specific finding that such public procedures are "impracticable, unnecessary, or contrary to the public interest."

In addition, the bill would make it clear that such a finding may be made by rule with respect to a category of future rulemaking proceedings. I have introduced legislation in previous Congresses which embodied this provision, and I am pleased that many agencies have by regulation already adopted the approach of applying notice and comment provisions to loan, grants, public property, and other matters covered by this section. This section would make all agency activities uniform on this point.

Section 3 of the bill would authorize agencies conducting formal proceedings—rulemaking or adjudication—under sections 556 and 557 of the APA to establish appeal boards, make up of agency employees, to review decisions of administrative law judges. It would further authorize the agency to delegate final decisional authority to such boards or to the administrative law judges, subject to discretionary, so-called certiorari-type, review by the agency.

One of the common criticisms of regulatory agencies today is that they are so caught up in the problems of processing and resolving individual cases that they do not have adequate time or energy left for considering the broader questions of regulatory policy. In order to free the agency members of the burden of deciding routine cases, both the ABA and the Conference have recommended that the agencies have authority to delegate final decisions to appeal boards or to the presiding administrative law judge, subject to the agency's right to review cases which appear to the agency to present important issues. Many agencies, among them the ICC, the FCC, and the CAB, have such authority already, either by statute or by reorganization plan. This bill would make a general grant of authority in connection with proceedings governed by sections 556 and 557.

The last section of the bill relates to agency subpena power. The Administrative Procedure Act does not presently contain a grant of subpena power. It does provide that where agency subpena authority exists, subpenas must be made available to private parties in adversary proceedings to the same extent that they are available to agency counsel.

Most agencies which conduct formal proceedings under sections 556 and 557 of the APA do have subpena power. Such power is granted in the agency's organic legislation or in the particular substantive statute under which the proceeding is conducted. A few agencies which conduct such proceedings either have subpena power which is in some way limited or inadequate to the needs of the parties, or have no subpena power at all. These agencies include the Food and Drug Administration, the Postal Service, and the Department of the Interior. The basic purpose of section 4 of the bill is to fill existing gaps by providing within the APA a grant of subpena power for all agency proceedings, both rulemaking and adjudication, which are required to be conducted on the record with opportunity for a hearing. Both the ABA and

the Administrative Conference have concluded that wherever an agency determination is of a nature and importance to justify requiring such formal procedures, all parties should have access to compulsory process for the obtaining of evidence.

S. 797 and S. 798 are alternative bills dealing with the problem of separation of functions. Section 554(d) of the Administrative Procedure Act now provides that an employee engaged in the performance of investigative or prosecutive functions for an agency may not participate in the decisionmaking process, except as witness or counsel, in the same or a factually related case. He cannot, in other words, participate first as an investigator or advocate and then turn around and act as decisionmaker or confidential adviser to the decisionmaker in the same case. This separation-of-functions requirement, however, is applicable only to certain classes of formal adjudications and it is not applicable at all to formal rulemaking.

The ABA proposals apply this provision across the board in all on-the-record proceedings governed by sections 556 and 557. The Administrative Conference has endorsed this approach with a single reservation: In those proceedings not now subject to section 554(d), the bar on participating or advising in the decision will not extend to agency officials who have not personally been involved in the case but who have general supervisory responsibility over employees who have participated in the case. In other words, the general counsel of an agency would not be disqualified from advising the agency members with respect to a formal rulemaking proceeding simply because attorneys in the general counsel's office participated in the hearing. S. 797 represents the ABA position on this question; S. 798 the Administrative Conference position.

S. 799 contains five amendments proposed by the American Bar Association. The Administrative Conference either opposes or remains uncommitted on these. Section 1 would insure that, with limited exceptions, the initial decision in an agency proceeding will be made by the impartial, presiding officer and not by the chief of the agency staff, whose subordinates act as advocates in agency proceedings.

Section 2 is a proposal directed toward improving the efficiency of administrative hearings by establishing, as part of the Administrative Conference, a committee on uniform rules to draft rules of procedure for formal adjudications. This reflects the strongly held views of the ABA that uniform rules would not only save the time of practioners, but would also help ordinary citizens who participate in agency proceedings by rationalizing an unnecessarily confusing aspect of agency practice.

Section 3 would prohibit ex parte communications between agency members and interested persons outside the agency regarding any fact as issue in any formal proceeding. The vices of ex parte communications in on-the-record proceedings are well known, and this section would fill a gap in the law and prohibit absolutely such contacts.

The fourth section provides for abridged hearing procedures where all parties consent, in order to save time and resources of the parties and agencies.

The final section is a provision concerning prejudicial agency publicity. This amendment is directed at the practice employed by some agencies of issuing incomplete information in a matter under review before a full determination of the facts has been made. To the extent that this practice can cause irreparable harm to businesses that were later absolved of wrongdoing, the ABA proposal attempts to stop trials in the press which might tarnish the integrity of agency deliberations.

The final bill in this package is S. 800, a bill to amend chapter 7, title 5, United States Code, with respect to the procedure for judicial review of certain administrative agency action. This bill involves legislative proposals which relate closely to the APA and which both the Bar Association and the Administrative Conference have carefully considered and have supported in the past. Briefly, it would implement three longstanding recommendations of the Administrative Conference by: first, abolishing the defense of sovereign immunity with respect to actions in Federal courts seeking relief other than money damages and stating a claim against an agency or officer acting in an official capacity—conference recommendation 69–1; second, permitting a plaintiff in judicial review proceedings to name as defendant the United States, the agency, the appropriate officer, or any combination of them and liberalizing the venue requirements for such actions—conference recommendation 70–1; and third, eliminating the requirement that there be at least $10,000 in controversy for Federal question jurisdiction under 28 U.S.C. 1331—conference recommendation 68–7.

This legislation was the subject of a comprehensive hearing before the Subcommittee on Administrative Practice and Procedure in June 1970. At that time representatives from the Administrative Conference and the administrative law section of the ABA testified in favor of the bill. The Department of Justice expressed opposition to abolishing sovereign immunity, but indicated that it had no objection to the second and third parts of the bill. The bill was favorably reported by the subcommittee but was not acted on by the Judiciary Committee. I hope we can get action by the Senate on this bill this session.

Mr. President, the subject of these bills has been discussed for over a decade. Two primary sources of information on the various proposals contained in these bills are the fall 1972 "Administrative Law Review," published by the administrative law section of the ABA, which is devoted entirely to this topic, and the 1973–74 report of the Administrative Conference of the United States, largely devoted to these amendments. The introduction to the "Administrative Law Review" issue on this subject contains an excellent overview, which I commend to my colleagues; the introduction, written by Mr. Cornelius Kennedy, has been reprinted in the RECORD and can be found on page S4329 of the March 12, 1975 daily edition.

These bills I am introducing will go a long way toward improving the manner in which agencies of the Federal Government administer their responsibilities. I hope they will be acted on in the 94th Congress.

Mr. MATHIAS. Mr. President, I am pleased to join today as a cosponsor of legislation embodying a number of reforms and improvements in Federal administrative procedure.

These bills are the result of efforts by the American Bar Association, the administrative law section, the Administrative Conference of the United States, and those of us in the Senate who have had a sustained interest in administrative law over the years. I have, in the past, sponsored some parts of this package and I am pleased to sponsor all of these bills today.

I do so not with the assurance that I will eventually support all of these measures, but in the anticipation that hearings which will be held in the Subcommittee on Administrative Practice and Procedures will provide an opportunity to review a number of aspects of administrative law and a chance to consider all manner of improvements thereto.

Ours is a massive government which intrudes into almost all aspects of the lives of its citizens. There seems to be no end to the number of agencies and bureaus, regulatory and otherwise. These are a great source of aid and protection to most citizens, but this vast Federal Establishment can also be a web of confusion for many Americans. It is a thicket of uncertainty for others who are unsure of their rights and of the procedures they must follow. While the procedure followed by the Government is a continuous source of activity for many Federal employees and the large Washington legal community, it is often bewildering to the average person.

I must say also that many members of the Federal bureaucracy, of the Washington legal community, and the nearby legal community of Baltimore, have been in the forefront of proposals to reform and simplify the Federal process. I welsome them and commend their efforts in this regard.

I hope that the legislation which we introduce today will result in improvement of the administrative practices of the Government. I believe that these problems have been too long neglected. I believe that we have failed to keep the rule of law at pace with the growth of the Federal bureaucracy. The result has contributed to the skepticism and cynicism about government. I will repeat again what I said over a year ago in connection with a then pending investigation into the procedures of the Cost of Living Council—no process will long retain or deserve popular support if its decisions are not arrived at by a process which appears open, fair, consistent, thorough, rational, enforceable, and necessary.

tiating unwarranted prejudicial publicity; second, agencies are required to notify adversely affected persons of proposed adverse publicity 72 hours in advance—unless there is an emergency or the circumstances otherwise make such notice impractical; third, agencies are required to give equal publicity to subsequent statements which modify the original criticism; and fourth, aggrieved parties are given a broad right to seek judicial relief. Of course, the section is not intended to reduce the public's right to obtain information from the Government and language to guard against such an interpretation is included. The Administrative Conference opposes the enactment of this section on the grounds that existing remedies are adequate to protect proceedings from prejudicial bias and prejudgment, and that agency rules containing standards for adverse publicity are a preferable method for protecting private parties. The ABA has characterized the Conference's standards as only providing minimum safeguards agains adverse publicity and as being merely hortatory in nature.

Two ABA proposals which are endorsed by the Administrative Conference but objected to by other groups are contained in H.R. 10198. Section 1 authorizes agencies to create appeal boards to review decisions of presiding officers—usually administrative law judges—and to limit review of decisions by both the administrative law judges and the appeals boards. These two reforms are urged since they lessen the burden on agency heads to review routine adjudicatory matters. To protect the integrity of appeal board process, language has been added establishing the qualifications of persons sitting on such boards, insulating them from agency employees performing investigatory and prosecutory functions, and protecting them from removal.

Section 2 of H.R. 10198 provides all agencies with minimum and uniform subpena powers from all formal proceedings and makes subpenas available to all parties. To facilitate agency action, the section requires agencies to allow administrative law judges to issue subpenas and allows agencies to seek enforcement of their own subpenas at the district court level. Agencies which presently have even broader subpena powers are unaffected by this proposal.

Finally, H.R. 10199 implements a series of recommendations of both the ABA and the Administrative Conference dealing with judicial review of administrative action. Section 1 amends 5 U.S.C. 702 to abolish the defense of sovereign immunity in equitable actions against the United States. It also amends 5 U.S.C. 703 to remove uncertainty as to who may be named as a defendant when the United States is sued. Section 2 gives Federal courts general jurisdiction over Federal questions without regard to the amount in controversy. Presently 28 U.S.C. 1331 requires that $10,000 be the amount of damages alleged. Section 3 amends 28 U.S.C. 1391(e) dealing with venue to permit the joinder of third parties in litigation in which the Federal Government is the defendant. None of these changes affect explicit limits on judicial review of agency action elsewhere in the statutes. All of these recommendations have been long advocated and their removal ends a source of occasional injustice to American citizens.

In closing I express the hope that this Congress can act on these matters. Over 20 years of work precede our deliberations.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan (Mr. FORD) is recognized for 5 minutes.

[Mr. FORD of Michigan addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

LEGISLATION TO IMPROVE VETERANS COST-OF-INSTRUCTION PROGRAM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin (Mr. CORNELL) is recognized for 5 minutes.

Mr. CORNELL. Mr. Speaker, I am introducing today legislation that will extend and improve the veterans cost-of-instruction—VCI—program which was originally established by Congress in 1972.

This legislation was designed to provide incentives for colleges and universities to inaugurate programs and activities that would serve the special needs of today's veteran. In particular, under VCI provisions these educational institutions provide local outreach programs both to recruit veterans and to inform them of the benefits they have accrued through military service; they serve to assist veterans in readjusting to academic life; and they offer counseling for the educationally disadvantaged.

There is no question of the success and beneficial impact of the VCI program during the 3 years of its operation. Hundreds of educational institutions have participated to the great benefit of thousands of our Vietnam-era veterans. Mr. Speaker, when we are asked what this Government is doing to help the younger veterans, I can cite no better example of our efforts than the VCI program.

I would like to outline briefly the main provisions of the measure I am introducing today.

First, the bill would extend the authorization of the program for 3 years, through fiscal year 1978.

Second, the bill specifically encourages the use of the VA workstudy program as a means of providing outreach, recruitment, and counseling services to educationally disadvantaged veterans.

Third, the bill would require each institution receiving VCI grants to submit an annual report on its program and activities to the Commissioner of Education. The Commissioner, in turn, would send a summary of these reports with his observations and recommendations to the Congress not later than 60 days after the end of each fiscal year.

Fourth, the bill attempts to address the serious and growing problems of confusion and redtape by requiring the Commissioner of Education to coordinate the activities of the VCI program with those of the Veterans' Administration.

Fifth, the bill requires that the VCI program be administered by an identifiable administrative unit in the Office of the Commissioner in order to insure proper administrative assistance and program support for institutions receiving VCI awards.

Mr. Speaker, in this period of high unemployment with over 20 percent of our young veterans jobless, there is certainly need for the extension and expansion of this program as provided in the Veterans Cost-of-Instruction Extension Act. I am privileged to introduce into the House today this measure which Senator ALAN CRANSTON, of California, proposed in the Senate on November 11.

RESPA NEEDS TO BE CHANGED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. LAFALCE) is recognized for 15 minutes.

Mr. LAFALCE. Mr. Speaker, I received numerous communications from people in western New York concerning the effects of the Real Estate Settlement Procedures Act—RESPA. I think many of their comments are highly relevant and I would like at this time to share them with my colleagues.

Edward Murty of Buffalo:

A great deal of additional work has been created which could potentially drive up the cost of closing without any concurrent benefit to the (consumer).

Herbert Solomon of Williamsville:

This act has . . . worked hardships on people buying and selling real estate. We do not understand what purpose this act is trying to accomplish.

Lauren D. Rachlin of Buffalo:

The main way that the consumer is hurt by the RESPA requirements is the extensive time lag in securing mortgage commitments.

Frank N. Cuomo of Buffalo:

If we really want to protect the "consumrs," I suggest we give them an opportunity to sue for treble damages if he has been misled or misinformed, but let's scrap RESPA.

James Edgar Hunt of Niagara Falls:

The education of the buyer should take place prior to the signing of the purchase contract.

Robert Lipp of Buffalo:

Although the motivation for (RESPA) was admirable, the legislation has created substantial additional work for the attorney, the real estate broker, the lending institution and the consumer.

James M. Buckley of Buffalo:

I agree with the intent of the legislation to help educate buyers, but it seems to me that there must be a simpler method of doing this.

David K. Diebold of Buffalo:

At best the RESPA forms are unclear to consumers, that their use complicates rather than simplifies the average real estate transaction, and that the Act does not serve any useful purpose in its present form.

its supporters. They have said that the bill will allow Federal employees to demonstrate their gratitude to members who have been responsive to their needs in the past. Clearly, some persons see this bill as an effort to obtain additional campaign support in return for past actions on behalf of Federal employees.

Federal civil servants ought to be properly reimbursed for the valuable work that they do for the public. Wage increases and fringe benefits ought to be decided on the basis of what is fair and what the Government can afford. They should not be decided just on the basis of how much political muscle civil servants can bring to bear at election time.

Finally, because of the importance of this issue, I asked my constituents for their opinion in a questionnaire. Their vote was nearly 2 to 1 against weakening the Hatch Act. I think that my constituents accurately perceive the need for continued protection to the public and the Federal civil service afforded by much of the Hatch Act.

For these reasons, I would not support this bill.

THE ADOPTION OF THE ADMINISTRATIVE PROCEDURE ACT OF 1946

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Alabama (Mr. FLOWERS) is recognized for 10 minutes.

Mr. FLOWERS. Mr. Speaker, on October 9, 1975, I introduced a series of six bills, H.R. 10194 to 10199, to improve administrative procedures. The foundation for administrative justice in this country is the Administrative Procedure Act adopted in 1946. Since that date the act has not been materially changed other than by addition of what is popularly known as the Freedom of Information Act.

However, the Administrative Procedure Act has deficiencies and as early as 1953, the President's Conference on Administrative Procedure was formed to recommend improvements. The conference's report in 1955 together with that of the Hoover commission and its Task Force on Legal Services convinced the American Bar Association that it should join in these efforts. In the 22 years since the commencement of this activity a number of basic reforms have been generally recognized as desirable; however, differences of approach and lack of joint congressional action have frustrated enactment of legislation. Finally in 1972 the American Bar Association adopted resolutions endorsing 12 proposals for change. All of these proposals have been reviewed by the Administrative Conference of the United States and other interested parties and finally we are at a point where they are firm, positions have crystalized, and the matter is fit for quick and long awaited congressional action. H.R. 10194 to 10199 are designed to implement these and other reforms in administrative procedure.

Specifically, H.R. 10194 would implement two ABA recommendations which have been endorsed by the Administrative Conference of the United States and against which no significant opposition has developed. Section 1 of this bill refines the concept of rule to exclude proceedings which affect one individual or firm. However, to preserve flexibility in agency action and to accommodate suggestions of the Administrative Conference the phrase ratemaking and cognate proceedings is added to the Administrative Procedure Act.

Section 2 of H.R. 10194 narrows the exceptions to the rulemaking requirements of 5 U.S.C. 553(a). It limits the military and foreign affairs exceptions in section 553(a)(1) to those matters which should be kept secret in the interest of national defense or foreign policy. By requiring that such determinations be made by Executive order and that such orders be properly applied, the proposal strikes a balance between the goal of executive accountability and legitimate concerns over foreign and defense security interests. The other change made by Section 2 is to delete the current exceptions for rulemaking in matters relating to "public property, loans, grants, benefits, or contracts." These exceptions have been widely criticized because of the significance of Federal Government grant, loan, contract and property management activity.

H.R. 10195 and H.R. 10196 are alternative bills dealing with the problem of separation of functions in agency adjudication. The purpose of both bills is to limit agency personnel who engage in investigating and prosecuting activity from either participating in or making the initial decision, from advising that decisionmaker, or from serving as a supervisor to the decisionmaker. Such a combination of roles might affect the decisionmaker's objectivity and would certainly affect public confidence in the fairness of the proceeding. H.R. 10195, which is supported by the ABA, totally prohibits supervisory contracts and limits communication with decisionmakers to situations where notice to and opportunity for participation by other parties has been afforded. H.R. 10196 is the Administrative Conference's version. It is the same as H.R. 10195 except that it allows a high level agency employee who had no connection with a particular ratemaking—or similar—proceeding to provide informal advice to the decisionmaker even though such employee may have general responsibility for investigatory or prosecutory functions.

H.R. 10197 contains a series of ABA proposals which the Administrative Conference has not endorsed. Section 1 clarifies the requirement of an initial decision in adjudication and restricts the rulemaking, ratemaking, and initial licensing situations in which the agency can dispense with a recommended decision by the administrative law judge in three respects: First:

> An expedited decision [must be] imperatively and unavoidably required to prevent public injury or defeat legislative policies.

This is stronger than the current language which requires finding that—

> Due and timely execution of [agency] functions imperatively and unavoidably requires [dispensing with an initial decision].

Second. Tentative agency decisions are never an acceptable alternative to recommended decisions of the administrative law judge.

Third. Agency employees may not recommend decisions in lieu of the administrative law judge.

Also, it should be noted that section 1 reflects changes which are called for by H.R. 10198, section 1. Although the Administrative Conference supports requirements for recommended or initial decisions in adjudication, the Conference believes that in initial licensing, rulemaking, and ratemaking the need for expeditious action may outweigh the value of such an initial or recommended decision and that an agency should have flexibility in determining whether it needs the decision of the presiding officer.

Section 2 of H.R. 10197 directs the Administrative Conference to develop uniform rules of procedure for adjudicatory proceedings. These rules would be binding on all agencies. To finance the preparation of the uniform rules the sum of $250,000 is appropriated. Despite the ABA's request this effort be launched, the Administrative Conference has asked that it not be given this duty. The Conference prefers to simply recommend uniform rules to the agencies in those areas where the need is most apparent.

Section 3 of H.R. 10197 deals with ex parte communications between interested parties and those agency personnel who are involved in the decisional process. The section defines the phrase "ex parte communications," prohibits such communications, requires agency personnel who receive such prohibited communications to place them in the public record, and directs agencies to consider any violations of these requirements in deciding the merits of a proceeding. Also the section sets forth the point in time at which these restrictions take effect. The ABA supports the legislation. Although the Administrative Conference approves the purpose of the legislation, it has not endorsed it because it has not yet decided whether legislation or agency rules are the most effective way of handling the problem.

Section 4 of H.R. 10197 authorizes agencies to provide by rule for adbridged procedures for use in on-the-record hearings when all interested parties consent. The Administrative Conference opposes this proposal because it believes that agencies already have this power and because it fears that enactment of such a provision might be construed to invalidate certain procedures presently employed in the absence of unanimous consent. The ABA rejects these arguments.

Section 5 of H.R. 10197 provides a technique for handling the problems of adverse agency publicity in connection with matters being investigated or prosecuted. The ABA proposes this reform because it believes such publicity can both cause unwarranted harm to private businesses and individuals and produce bias at the agency which undermines a party's right to a fair hearing. To guard against these problems the bill relies upon four proposed provisions. First, agencies are directed to refrain from ini-